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March 23, 2009

Ms. Pam Schindler
Montana Senate
Post Office Box 200500
Helena, MT 59620-0500
Facsimile (406) 444-4875

Via Facsimile Only

Re: Opposition to HB 515,
Scheduled for Committee Hearing March 24, 2009

Dear Ms. Schindler:

I am a Special Assistant Deputy County Attorney in Ravalli County. I have represented the Department of Public Health and Human Services, Child and Family Services (CFS) for the past twelve (12) years in Ravalli County on a contract basis. In that time, I have litigated hundreds of civil child abuse/neglect cases ("DN cases") from beginning to end.

I am writing to express my strong opposition to House Bill 515. In short, I am requesting that the Senate Judiciary Committee take into consideration the viewpoint of the county attorneys who try these cases in our trial courts every day. Unfortunately, HB 515 would unnecessarily complicate DN cases at substantial cost to the State without accomplishing any of the intended objectives.

1. **The procedure for dismissal of a DN case is not broken.** Under existing law, a DN case must be dismissed by the district court only when *all* of the following criteria are met: (1) a child has been reunited with his parents; and (2) the child has remained in the home for a minimum of 6 months with no additional confirmed reports of child abuse or neglect; and (3) the court has been advised by the agency that filed the action in the first place (CFS) that there is no further reason for CFS intervention or monitoring. These are reasonable and objective criteria that arise only *after* multiple evidentiary hearings have been held and the welfare of the children has been thoroughly litigated in district court over a period of one to two years.

In addition, every motion to dismiss is originally based upon the exercise of prosecutorial discretion by the county attorney handling the case. Thus, the current procedure for dismissal of cases is objective and reasonable. Unfortunately, HB 515 would require the exercise of prosecutorial discretion to be litigated in district court (raising separation of powers issues) based upon the subjective preferences or demands of the litigants, despite the fact that objective criteria for dismissal of a case have been met. This violates the fundamental concept of judicial economy as well as a child's need for permanency.

2. **HB 515 would be costly and unnecessarily complicates already difficult legal procedure**. Any perceived benefits from HB 515 must be balanced against the cost of extending DN cases which meet the statutory criteria for dismissal. The truth is that DN cases are expensive to keep open. They are also expensive in terms of burdens on the Montana court and legal system. In nearly every DN case, the district court is required by statute to appoint an attorney for each parent and child. These attorneys are usually public defenders or conflict counsel paid hourly by the State (*See* Mont. Code Ann. § 41-3-425). In addition, in Ravalli County the district court appoints a Court Appointed Special Advocate volunteer (CASA) for each child. Thus in a typical DN case involving more than one child, there are two or three separate lawyers for the parents (multiple fathers seem to be the norm) in addition to a lawyer and guardian ad litem for each of the children. As you might imagine, the parents' interests often conflict. For instance, custodial and non-custodial parents essentially get a free custody battle at state expense through DN proceedings. There are also routinely conflicts of interest involving parents who have criminal charges pending against them. In addition to legal costs and burdens on the court system, the State incurs substantial direct costs every month a DN case stays open. For instance, State social workers must be assigned to each DN case, and most cases require treatment providers such as psychologists, addiction and anger-management counselors, visitation supervisors, and in-home therapists, and usually foster-care--all paid for by the State. Again, any perceived benefit of extending cases that meet the objective criteria for dismissal would be far outweighed by the costs of a statutory scheme that allowed litigation of every conceivable objection to closure of a case.

3. **Although HB 515 may have been drafted with CASA in mind, it is much more likely to be used by the abusive parents.** There are serious unintended consequences to HB 515 which the proponents have not considered. By its terms, the statute creates new rights only for *parties* at the end of a long process in DN cases. It is unclear how CASA volunteers are "parties" within the meaning of the statute. The current statutory scheme in Title 41 makes no reference to CASA. Regardless, the proposed statute will have the unintended consequence of creating rights for abusive parents, who clearly *are* parties, and who often have ulterior motives in wanting to keep a DN case alive (such as to protract their own underlying custody battle, to avoid having custody decided in favor of the other parent, or to force the state to remain involved in child support or other civil issues that may have arisen as part of the DN case). Again, without a resolution of CASA's status as a party, it is not entirely clear that CASA itself would even be able to utilize the new statute. In counties like Ravalli County, assuming the Court somehow found CASA to be a party, the CASA would then need an appointed attorney at state expense in order to litigate their motion. *This would give the child two attorneys* in every county like Ravalli County. This seems absurd and is one of the many unintended consequences of this Bill.

In conclusion, I urge the committee to consider the context in which HB 515 is proposed. The existing statutory scheme has been extensively revised by the legislature over the past decade in connection with federal efforts to provide for permanency of children as well as our own legislature's appropriate concern for protecting the rights of all parties involved in DN proceedings. **Existing law already requires multiple mandatory evidentiary hearings throughout a lengthy process in which the welfare of the child is fully litigated and balanced with the rights of parents. I am certain there is no other area of the law, civil or criminal, which is the subject of so many mandatory deadlines and hearings. It is against this backdrop that the proponents of HB 515 wish to add yet another expensive hearing and the prospect of lengthy extensions to expensive DN proceedings.** It is my understanding that HB 515 arose out of unique circumstances in a couple of specific counties in Montana. To my knowledge, there has been no request by CASA or any other group in Ravalli County for the rights established in HB 515. In short, the proponents of HB 515 have not demonstrated any compelling *state-wide need to add yet another hearing*

and additional attorneys to this already complicated and expensive process. Any marginal benefit would be substantially outweighed by the costs to the State in implementing the new law and the unintended consequences of HB 515.

Very truly yours,

Michael L. Hayes

MLH:jmj

c: George Corn, Esq.